

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

PHILLIP MCCAIN, §
§
Plaintiff, §
§
v. § CIVIL ACTION NO. H-07-2387
§
P. LEE, *et al.*, §
§
Defendants. §

ORDER OF DISMISSAL

Phillip McCain, a state inmate proceeding *pro se* and seeking leave to proceed *in forma pauperis*, filed this civil rights complaint under 42 U.S.C. § 1983. Because he is not entitled to proceed *in forma pauperis*, this case will be dismissed. Under 28 U.S.C. § 1915(g), an inmate is not allowed to bring a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action or appeal which was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, unless he is under imminent danger of serious physical injury at the time suit is filed.

Plaintiff declares to this Court under penalty of perjury that he has never filed any other lawsuits in state or federal court relating to his imprisonment, and has never been sanctioned as a result of any lawsuit. Public records for the United States District Courts reveal that plaintiff has filed over 130 federal lawsuits and appeals, has been barred from

proceeding *in forma pauperis*, and has been sanctioned more than once for his abusive litigation practices in both the district courts and Fifth Circuit Court of Appeals. *See, e.g.*, *McCain v. Ryan White Planning Council*, No. H-05-4179 (S.D. Tex. 2005). In his instant lawsuit, plaintiff does not even attempt to allege that he is under imminent danger of serious physical injury.

This complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915(g). **PLAINTIFF IS WARNED THAT HIS FILING OF FURTHER FRIVOLOUS LAWSUITS WILL RESULT IN THE IMPOSITION OF MONETARY AND OTHER SANCTIONS AGAINST HIM, INCLUDING AN ORDER PRECLUDING HIM FROM FILING ANY LAWSUITS IN THIS DISTRICT WITHOUT PRIOR AUTHORIZATION FROM A UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS.** Plaintiff may move within thirty days to reopen this case upon payment of the \$350.00 filing fee in full.

Signed at Houston, Texas on August 20, 2007.



Gray H. Miller
United States District Judge